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BANK MUAMALAT MALAYSIA BHD v. MENTERI SUMBER MANUSIA, MALAYSIA & ORS

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
VERNON ONG LAM KIAT JCA
B ZALEHA YUSOF JCA
[CIVIL APPEAL NO: W-01(A)-449-11-2016]
29 NOVEMBER 2018

C ***LABOUR LAW:*** *Judicial review – Appeal against – Judicial review of decision of Minister of Human Resources ('Minister') – Dispute between bank and National Union of Bank Employees ('NUBE') – Bank promoted and re-designated staff – Staff prevented from continuing as members of NUBE after promotion and re-designation – NUBE referred dispute to Director General of Industrial Relations which then referred to Minister – Minister decided that bank's employees not employed in* D *managerial, executive, confidential or security capacities – Whether Minister exceeded scope of authority – Whether there was procedural impropriety – Whether statutory requirements complied with – Industrial Relations Act 1967, s. 9(1A)*

The appellant, a bank, created a category known as 'customer relationship representatives' ('CRR') within the Executive Grade 12, a junior officer E grade. The appellant's employees (i) were categorised as clerical, non-clerical and special grade and were represented by the fourth respondent, the National Union of Bank Employees ('NUBE'); and (ii) who fell within the executive grades of 10, 11 and 12, including the CRRs, were represented by the appellant's in-house officers' union, known as Kesatuan Pegawai-pegawai F Bank Muamalat Malaysia Berhad. A dispute arose between the appellant and the NUBE after certain general clerical grade employees of the appellant were promoted and re-designated as CRRs. The NUBE referred the dispute to the second respondent, the Director General of Industrial Relations ('DGIR'). The essence of the dispute was that the appellant's promotion and G re-designation of its clerical staff, who were members of the NUBE to the post of CRR, prevented them from continuing as members of the NUBE. The DGIR conducted enquiries and interviewed the CRRs at the appellant's branches in Pulau Pinang, Kelantan, Selangor, Kuala Lumpur and Johor. Subsequently, the DGIR notified the first respondent, the Minister of Human H Resources ('the Minister') of the dispute. The DGIR later communicated, to the appellant, the Minister's decision that the CRRs employed by the appellant were not employed in the managerial, executive, confidential or security capacity. This prompted the appellant to commence an application for judicial review, at the High Court, against the Minister's decision. Dismissing the application, the High Court Judge held that (i) the Minister I was not required to (a) limit his decision to the former employees of the NUBE; (b) refer the complaint to the third respondent, the Director General

of Trade Unions; and (c) produce the DGIR's report; (ii) the promotion of the appellant's employees was contrary to the collective agreement between the appellant and the NUBE and contrary to the spirit of the Industrial Relations Act 1967 ('the Act'); and (iii) the Minister and the DGIR had taken all necessary steps, as required by the Act, and the appellant failed to show any illegality, irrationality or procedural impropriety. Hence, the present appeal. In support of its appeal, the appellant submitted that (i) the Minister had exceeded the scope of his authority in ruling that the CRRs were not employed in the excluded capacities; and (ii) the Minister failed to produce the DGIR and investigation reports upon which his decision was founded upon.

Held (dismissing appeal with costs)
Per Vernon Ong Lam Kiat JCA delivering the judgment of the court:

(1) Although there was a specific reference to 'jawatan juruwang' in the NUBE's letter of complaint to the DGIR, the dispute, in essence, related to the question of whether the CRRs were employed in the managerial, executive or confidential capacities. The fact that some current CRRs were not formerly members of the NUBE was irrelevant as the question of whether they were employed in the 'excluded capacities' continued to determine whether or not they could become members of the NUBE. Section 9(1A) of the Act does not require a dispute to be confined to workmen who are, or were previously, members of the trade union that has made the reference to the DGIR. Section 9(1A) is couched upon such that any dispute as to whether any workman or workmen who are employed in a managerial, executive, confidential or security capacity, may be referred to the DGIR. At any rate, the job scope and functions of the CRRs were the same irrespective of whether or not the CRR was formerly a member of the NUBE. This fact was consistent with the DGIR finding that there was no discernible difference in the job scope and functions between promoted CRRs and other CRRs. In other words, all CRRs perform and undertake the same tasks. Accordingly, the Minister had not asked himself the wrong question or committed an error of law or had exceeded his jurisdiction under s. 9(1D) of the Act. (para 18)

(2) The Minister had stated the relevant facts, which were placed before him when coming to his decision. The Minister and the DGIR filed separate affidavits, setting out the particulars of the investigative process conducted following receipt of the NUBE's complaint letter. There were, at least, two meetings organised by the DGIR which were attended by the representatives of the appellant and the NUBE. On 12 occasions, the DGIR's officers had attended the appellant's branch offices and interviewed CRRs in Selangor, Kuala Lumpur, Johor, Kelantan and Pulau Pinang. In the course of their investigations, the DGIR obtained information on the job scope of the CRRs and their roles and responsibilities. The results of the investigation were submitted to

the Minister who, after considering the same, rendered his decision. Accordingly, it was apparent that the Minister only came about to his decision after an examination of the relevant reports, negotiations between the parties, results of the DGIR's investigations, the law and other relevant matters. In all circumstances, as there was no requirement under s. 9 of the Act obliging the Minister or the DGIR to disclose the investigation report, the non-production of the DGIR's report was not fatal. The Minister's decision was not impugned on the ground of procedural impropriety. Rather, the point raised by the appellant was that there was no evidence before the High Court. The appellant's contention was clearly without merit, as demonstrated by the comprehensive affidavits filed by the Minister and the DGIR. (paras 20-22)

Bahasa Malaysia *Headnotes*

Perayu, sebuah bank, membentuk satu kategori yang dikenali sebagai 'wakil-wakil hubungan pelanggan' ('CRR') dalam Eksekutif Gred 12, satu gred pegawai rendah. Pekerja-pekerja perayu (i) dikategori sebagai perkeranian, bukan perkeranian dan gred khas dan diwakili oleh responden keempat, Kesatuan Kebangsaan Pekerja-pekerja Bank ('NUBE'); and (ii) yang terangkum dalam gred eksekutif 10, 11 dan 12, termasuk CRR, diwakili oleh kesatuan dalaman pegawai-pegawai perayu, yang dikenali sebagai Kesatuan Pegawai-pegawai Bank Muamalat Malaysia Berhad. Satu pertikaian timbul antara perayu dan NUBE selepas beberapa pekerja gred perkeranian perayu dinaikkan pangkat dan dilantik semula sebagai CRR. NUBE merujuk pertikaian ini kepada responden kedua, iaitu Ketua Pengarah Perhubungan Perusahaan ('KPPP'). Inti pati pertikaian ini ialah kenaikan pangkat dan pelantikan semula kakitangan perkeranian sebagai CRR, yang menjadi ahli NUBE untuk jawatan CRR, menghalang mereka terus menjadi ahli NUBE. Ketua Pengarah Perhubungan Perusahaan menjalankan inkuiri dan menemu bual CRR di cawangan Pulau Pinang, Kelantan, Selangor, Kuala Lumpur dan Johor. Berikutan itu, KPPP memaklumkan responden pertama, iaitu Menteri Sumber Manusia ('Menteri'), tentang pertikaian ini. Ketua Pengarah Perhubungan Perusahaan kemudian memaklumkan perayu akan keputusan Menteri bahawa CRR yang diambil bekerja oleh perayu tidak diambil bekerja dalam kapasiti pengurusan, eksekutif, kerahsiaan atau sekuriti. Ini menyebabkan perayu memulakan satu permohonan semakan kehakiman, di Mahkamah Tinggi, terhadap keputusan Menteri. Menolak permohonan tersebut, Hakim Mahkamah Tinggi memutuskan (i) Menteri tidak dikehendaki (a) mengehadkan keputusan beliau pada bekas pekerja NUBE; (b) merujuk aduan tersebut pada responden ketiga, iaitu Ketua Pengarah Kesatuan Sekerja; dan (c) mengemukakan laporan KPPP; (ii) kenaikan pangkat pekerja-pekerja perayu bercanggah dengan perjanjian kolektif antara perayu dan NUBE dan bercanggah dengan maksud Akta Perhubungan Perusahaan 1967 ('Akta'); dan (iii) Menteri dan KPPP telah mengambil semua langkah yang perlu, seperti yang dikehendaki Akta, dan perayu gagal

menunjukkan apa-apa ketaksahan, ketakrasionalan atau ketakaturan tatacara. Maka timbul rayuan ini. Menyokong rayuannya, perayu menghujahkan (i) Menteri melampaui skop kuasa beliau dalam memutuskan CRR tidak diambil bekerja dalam kapasiti terkecuali; dan (ii) Menteri gagal mengemukakan laporan-laporan oleh KPPP dan siasatan yang berdasarkannya keputusan beliau dibuat.

Diputuskan (menolak rayuan dengan kos)
Oleh Vernon Ong Lam Kiat HMR menyampaikan penghakiman mahkamah:

(1) Walaupun terdapat rujukan khusus pada 'jawatan juruwang' dalam surat aduan NUBE kepada KPPP, pertikaian tersebut, asasnya, berkaitan soalan sama ada CRR diambil bekerja dalam kapasiti pengurusan, eksekutif atau kerahsiaan. Fakta beberapa CRR kini yang dahulunya bukan ahli NUBE tidak relevan kerana soalan sama ada mereka diambil bekerja dalam kapasiti terkecuali terus menentukan sama ada atau tidak mereka boleh menjadi ahli NUBE. Seksyen 9(1A) Akta tidak mengkehendaki agar satu pertikaian dihadkan pada pekerja yang, atau sebelum ini, ahli kesatuan sekerja yang membuat rujukan pada KPPP. Seksyen 9(1A) diungkapkan dalam bentuk mana-mana pertikaian sama ada pekerja atau pekerja-pekerja yang diambil bekerja dalam kapasiti pengurusan, eksekutif, kerahsiaan atau sekuriti, boleh dirujuk pada KPPP. Dalam apa-apa jua keadaan, skop kerja dan fungsi-fungsi CRR adalah sama tanpa mengira sama ada CRR dahulunya ahli NUBE atau tidak. Fakta ini selaras dengan dapatan KPPP bahawa tiada perbezaan yang dapat dilihat antara skop kerja dan fungsi-fungsi antara CRR yang dinaikkan pangkat dengan lain-lain CRR. Dalam erti kata lain, semua CRR menjalankan dan melakukan tugas yang sama. Selaras dengan itu, Menteri tidak bertanyakan soalan yang salah pada diri beliau atau melakukan apa-apa kekhilafan undang-undang atau melampaui bidang kuasa beliau bawah s. 9(1D) Akta.

(2) Menteri telah menyatakan fakta-fakta relevan, yang dikemukakan pada beliau dalam mencapai keputusan beliau. Menteri dan KPPP memfailkan afidavit berasingan, menyatakan butiran proses siasatan yang dijalankan selepas menerima surat aduan NUBE. Terdapat, paling kurang, dua mesyuarat yang diadakan oleh KPPP yang dihadiri oleh wakil-wakil perayu dan NUBE. Sebanyak 12 kali, pegawai-pegawai KPPP hadir ke pejabat-pejabat cawangan perayu dan menemu bual CRR di Selangor, Kuala Lumpur, Johor, Kelantan dan Pulau Pinang. Semasa siasatan mereka, KPPP menerima maklumat tentang skop kerja CRR serta peranan dan tanggungjawab mereka. Keputusan siasatan diserahkan kepada Menteri yang, selepas mempertimbangkannya, memberi keputusan beliau. Oleh itu, jelas bahawa Menteri mencapai keputusan beliau selepas memeriksa laporan-laporan relevan, rundingan antara

pihak-pihak, keputusan siasatan KPPP, undang-undang dan lain-lain hal perkara relevan. Dalam semua hal keadaan, oleh kerana tiada syarat bawah s. 9 Akta yang mewajibkan Menteri atau KPPP mendedahkan laporan siasatan, kegagalan mengemukakan laporan KPPP tidak menjejaskan. Keputusan Menteri tidak dipersoalkan atas dasar ketakaturan tatacara. Sebaliknya, hujahan yang dikemukakan oleh perayu ialah tiada keterangan di Mahkamah Tinggi. Hujahan perayu jelas tidak bermerit, seperti yang dibuktikan oleh afidavit-afidavit lengkap yang difailkan oleh Menteri dan KPPP.

Case(s) referred to:

AmBank (M) Bhd v. Menteri Sumber Manusia & Anor And Other Appeal [2014] 1 LNS 686 CA ***(refd)***

Hasni Hassan & Ors v. Menteri Sumber Manusia & Anor [2013] 6 CLJ 74 CA ***(refd)***

Hong Leong Bank Bhd v. Menteri Sumber Manusia, Malaysia & Ors [2017] 5 CLJ 675 CA ***(refd)***

Kesatuan Kebangsaan Pekerja-pekerja Syarikat-Syarikat Pembuatan Keluaran Getah lwn. Menteri Sumber Manusia & Satu Lagi [2012] 7 CLJ 385 HC ***(refd)***

Minister of Home Affairs v. Persatuan Aliran Kesedaran Negara [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186 SC ***(refd)***

Radha Krishnan Kandiah v. Menteri Sumber Manusia Malaysia & Anor [2009] 1 LNS 1311 HC ***(refd)***

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers' Union [1995] 2 CLJ 748 CA ***(refd)***

Legislation referred to:

Industrial Relations Act 1967, ss. 9, 9(1A), (1B), (1C), (1D), (2), 33(1), (2)
Printing Presses and Publications Act 1984, s. 6(1)(a)

For the appellant - Sivabalah Nadarajah & Reena Enbasegaram; M/s Shearn Delamore & Co

For the 1st, 2nd & 3rd respondents - Ruzimah Mohd Radzuan & Shahmin Amizah Abu Bakar; SFC

For the 4th respondent - Edmund Bon Tai Soon & Andrew Yong; M/s Amerbon

[Editor's note: Appeal from High Court, Kuala Lumpur; Judicial Review No: 25-249-08-2015 (affirmed).]

Reported by Najib Tamby

JUDGMENT

Vernon Ong Lam Kiat JCA:

Introduction

[1] This appeal is against the decision of the High Court given on 2 November 2016 dismissing the appellant's application for judicial review of the Minister of Human Resources' decision dated 18 May 2015 which held that the employees of the appellant known as customer relationship representatives are not employed in a managerial, executive, confidential or security capacity.

Salient Facts

[2] The appellant is a licensed bank under the Islamic Financial Services Act 2013 and a member of the Malayan Commercial Banks Association ('MCBA').

[3] The Minister of Human Resources, Malaysia ('Minister'), the Director General of Industrial Relations ('DGIR') and the Director General of Trade Unions ('DGTU') are the first, second and third respondents respectively. The fourth respondent (the National Union of Bank Employees ('NUBE')) is a trade union of bank employees registered under the Trade Unions Act 1959. Pursuant to a collective agreement dated 3 November 2015 between the MCBA and NUBE, NUBE was accorded recognition by the appellant to represent its employees in the non-clerical, general clerical and special grade clerical category.

[4] In 2009, the appellant created a category known as customer service representatives ('CRR') within the Executive Grade 12, which is a junior officer grade.

[5] From 2009 until 20 August 2015, there were 2,265 employees of the appellant who consisted of eligible non-clerical, clerical and special grade clerks, teller, and customer service representatives (Grades 17 and 18) who were selected to be promoted based on their performance for the position of CRR. There were about 23 successful applicants who rejected the promotion or did not want to attend the interview, and only 160 of the 2,265 employees concerned, were eventually promoted since 2009. As at the date of the appellant's application for leave to commence judicial review proceedings, there were 134 CRRs.

[6] The appellant's employees who are categorised as clerical, non-clerical and special grade are represented by NUBE. The appellant's employees who fall within the executive Grades 12, 11 and 10 including the CRRs, are represented by the appellant's in-house officers' union Kesatuan Pegawai-Pegawai Bank Muamalat Malaysia Bhd ('KEPAK').

[7] A dispute has arisen between the appellant and NUBE arising from the promotion of certain general clerical grade employees of the appellant, who were promoted and re-designated as CRRs. By a letter of complaint dated 18 December 2014, NUBE referred the dispute to the DGIR under s. 9(1A) of the Industrial Relations Act 1967 ('the IRA 1967').

[8] The DGIR conducted enquiries and interviewed the CRRs under s. 9(1B) of the IRA at the appellant's branches in Penang, Kelantan, Selangor, Kuala Lumpur and Johore. Subsequently, the DGIR notified the Minister of the dispute under s. 9(1C) of the IRA.

[9] On 25 May 2015, the DGIR wrote to the appellant and NUBE enclosing the Minister's decision pursuant to s. 9(1D) of the IRA whereby it was decided that the CRRs employed by the appellant are not employed in the managerial, executive, confidential or security capacity, as follows:

> Customer Relationship Representative adalah pekerja-pekerja yang digaji bukan dalam kapasiti pengurusan, Eksekutif, sulit atau keselamatan.

The Dispute

[10] The essence of the dispute which was referred to the DGIR was NUBE's complaint that the appellant's promotion and redesignation of its clerical staff, who were members of NUBE to the post of CRR, prevented them from continuing as members of NUBE.

Decision Of The High Court

[11] In summary, the findings of the learned judge are as follows:

(i) the Minister was not required to limit his decision to the former employees of NUBE;

(ii) the Minister was not required to refer the complaint to the DGTU;

(iii) the Minister was not required to produce the DGIR's report;

(iv) the promotion of the appellant's employees was contrary to the collective agreement between the appellant and NUBE and contrary to the spirit of the IRA 1967; and

(v) the Minister and the DGIR had taken all necessary steps as required by the IRA 1967 and the appellant had failed to show any illegality, irrationality or procedural impropriety.

Submission Of Parties

[12] Before us, learned counsel for the appellant advanced two principal grounds. First, the Minister had acted beyond his jurisdiction in handing down his decision as his ruling exceeded the terms of NUBE's complaint. The Minister's decision under s. 9(1A) of the IRA 1967 can only be in respect of the dispute raised by any of the parties, vis trade union of workmen or by an employer or by a trade union of employers. NUBE's only complaint was the issue of the capacity and scope of the appellant's tellers, ie, NUBE's former members, who had accepted the promotion to the position of CRRs, resulting in them coming out of NUBE's scope of representation. The issue was not whether or not all the CRRs came within the scope of NUBE's representation. In purporting to make a blanket ruling for the entire CRR category instead of confining itself to the issue raised in the trade dispute, the Minister had asked itself the wrong question and committed an error of law (*AmBank (M) Bhd v. Menteri Sumber Manusia & Anor And Other Appeal* [2014] 1 LNS 686; *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers' Union* [1995] 2 CLJ 748; *Minister of Home Affairs v. Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186).

[13] Second, learned counsel argued that despite the Minister's decision being challenged in a judicial review application the Minister failed to produce the DGIR report and investigation report upon which his decision was founded upon. The reviewing court must have before it all the material upon which the Minister's impugned decision had been premised upon. It is incumbent upon the Minister to justify the manner in which he came to his decision. In the absence of the same, the Minister's decision cannot be sustained (*Hong Leong Bank Bhd v. Menteri Sumber Manusia, Malaysia & Ors* [2017] 5 CLJ 675 (CA)).

[14] In reply, learned Senior Federal Counsel appearing for the Minister, the DGIR and the DGTU argued firstly that the DGIR had conducted a thorough investigation pursuant to s. 9(1B) of the IRA. The DGIR found that the CRRs were in fact performing clerical functions; the CRRs did not "(vi) Tidak membuat penilaian prestasi; (vii) Tidak mengambil tindakan disiplin; (viii) Tidak mengakses maklumat sulit seperti minit mesyuarat Pengurusan Kewangan Syarikat dan maklumat peribadi pekerja". Further, the Minister's discretion under s. 9(1D) of the IRA is wide, but not unlimited and, is based on his objective consideration of the referred dispute in the light of the DGIR's report and finding of the DGIR. Secondly, Hong Leong Bank cited by the appellant is distinguishable as in that case the DGIR did not file any affidavit in reply whereas in this case, the DGIR filed an affidavit setting out the details of investigations he conducted and the findings. It was also argued that s. 9(1D) of the IRA did not require the Minister to consider the DGIR's report.

[15] Learned counsel for NUBE advanced the following points in reply:

(i) there is nothing in s. 9(1A) of the IRA 1967 that requires the complaint made by NUBE to be limited to its former members and that the DGIR was correct to investigate and the Minister was correct to make his decision in respect of the CRRs, who were all excluded from being members of NUBE, as a class. The fact that some current CRRs were not formerly members of NUBE is irrelevant, since the question of whether or not they are employed in an executive, management, security or confidential capacity continues to determine whether or not they can become members of NUBE and be represented by NUBE. There is no error of law as the Minister's decision pursuant to s. 9(1D) relates back to s. 9(1A) of the IRA 1967;

(ii) this case is distinguishable from Hong Leong Bank where the Court of Appeal held that the failure of the DGIR to file a separate affidavit meant that there was no material before the High Court to confirm that the DGIR had acted in a reasonable manner. In this case, however, both the Minister and the DGIR had filed separate affidavits and explained the investigations process. Further, the Minister only made his decision after an examination of the relevant reports, negotiations between the

parties, results of the DGIR's investigations, the law and other relevant factors. The investigations carried out by the DGIR were also comprehensive, whereby interviews were conducted with the CRRs in the appellant's branches in five states and meetings were conducted with the appellant. The Minister's failure to produce the investigation report was not fatal as there was no requirement under the relevant provisions which compels the Minister or the DGIR to disclose investigation reports (*Radha Krishnan Kandiah v. Menteri Sumber Manusia Malaysia & Anor* [2009] 1 LNS 1311; [2010] 4 MLJ 713; *Hasni Hassan & Ors v. Menteri Sumber Manusia & Anor* [2013] 6 CLJ 74 (CA); *Kesatuan Kebangsaan Pekerja-pekerja Syarikat-Syarikat Pembuatan Keluaran Getah lwn. Menteri Sumber Manusia & Satu Lagi* [2012] 7 CLJ 385; [2012] 9 MLJ 748); and

(iii) the appellant's argument that there was no relevant material before the High Court is without basis as the learned judge considered the affidavits filed by the Minister and the DGIR detailing the complaint, the meetings between the parties, the investigations conducted and the DGIR's findings. The learned judge correctly found that the Minister's decision pursuant to s. 9(1D) of the IRA 1967 had been properly and lawfully made following the Minister's consideration of the relevant issues relating to the dispute.

Decision

[16] At the outset, it is pertinent to note that NUBE's membership is open to all employees of banks or financial institutions whose job contents consist of clerical functions, irrespective of their designation, but exclude those who are employed in a managerial, executive or confidential or security capacity ('excluded capacities'). The concept of excluded capacities is derived from s. 9 of the IRA 1967 which deals primarily with the recognition of trade unions by employers for the purpose of collective bargaining. As such, s. 9(1) of the IRA 1967 distinguishes between workmen employed in the excluded capacities and workmen employed in other capacities.

[17] A trade union, the majority of whose members are employed outside the excluded capacities may not seek recognition or serve an invitation to commence collective bargaining in respect of members employed in the excluded capacities. As a labour union, NUBE's functions are to negotiate wages and working conditions, to regulate relations between worker and employer, to take collective action to enforce the terms of collective bargaining, to raise new demands on behalf of its members and to help settle their grievances. In order to enable NUBE to perform its responsibilities, the size of its membership is important. The effectiveness of collective bargaining and effective dispute resolution between employers and employees is dependent upon the number of members of the union. In the light of the above mentioned it can be appreciated that NUBE lodged the

complaint with the DGIR over the fact that CRRs falling under the excluded capacities would remain as or become ineligible to become NUBE's members thereby ultimately affecting their membership enrolment in the appellant as a whole.

[18] The appellant's first complaint relates to the contention that the Minister had exceeded the scope of his authority in ruling that CRRs are not employed in the excluded capacities. Although there is specific reference to "jawatan juruwang" in NUBE's letter of complaint to the DGIR, we are of the view that the dispute in essence relates to the question of whether CRRs are employed in the a managerial, executive or confidential or security capacities. The fact that some current CRRs were not formerly members of NUBE is irrelevant as the question of whether they are employed in the excluded capacities continues to determine whether or not they can become members of NUBE. We do not think that s. 9(1A) of the IRA 1967 requires a dispute to be confined to workmen who are or were previously members of the trade union that has made the reference to the DGIR. We say this because s. 9(1A) of the IRA 1967 is couched such that any dispute as to "whether any workman or workmen are employed in a managerial, executive, confidential or security capacity" may be referred to the DGIR. At any rate, the job scope and functions of the CRRs are the same irrespective of whether or not the CRR was formerly a member of NUBE. This fact is consistent with the DGIR's finding that there is no discernible difference in the job scope and functions between promoted CRRs and other CRRs; in other words, all CRRs perform and undertake the same tasks. Accordingly, we do not think that the Minister had asked himself the wrong question or committed an error of law or had exceeded his jurisdiction under s. 9(1D) of the IRA 1967. The cases cited by learned counsel for the appellant are of no aid to the appellant's argument and may be distinguished on the facts. *Ambank (M) Bhd v. Menteri Sumber Manusia & Another and Another Appeal* relates to a claim by the Association of Bank Officers under s. 9(2) of the IRA 1967 for recognition of a class of workmen specifically identified as those in 'Executive Scale E'. *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* was an appeal against the decision of the High Court quashing an award of the Industrial Court which turned on two issues, namely, as to the effect of ouster clauses in Acts of Parliament and secondly, as to the proper construction to be given to sub-s (1) and (2) of s. 33 of the IRA 1967. *Minister of Home Affairs v. Persatuan Aliran Kesedaran Negara* relates to an application for an order of certiorari to quash the decision of the Minister of Home Affairs, Malaysia refusing Aliran's application for a permit under s. 6(1)(a) of the Printing Presses and Publications Act 1984.

[19] The second complaint relates to the non-production of the DGIR's report and investigation report. Learned counsel for the appellant relied on Hong Leong Bank where the Court of Appeal held that the failure of the DGIR to file a separate affidavit meant that there was no material before the

A High Court to determine whether the DGIR had acted in a reasonable manner. Further, the Minister therein made bare averments in his affidavits and failed to refer to the relevant materials he took into consideration in coming to his decision.

B **[20]** In the instant case, however, the Minister had stated the relevant facts which were placed before him when coming to his decision. The Minister and the DGIR have filed separate affidavits setting out the particulars of the investigative process conducted following receipt of NUBE's complaint letter. There were at least two meetings organised by the DGIR which were attended by representatives of the appellant and NUBE. On 12 occasions C between 4 March 2015 to 3 April 2015, the DGIR's officers had attended the appellant's branch offices and interviewed the CRRs in Selangor, Kuala Lumpur, Johore, Kelantan and Penang. In the course of their investigations, the DGIR obtained information on the job scope of the CRRs, roles and responsibilities. The results of the investigation were submitted to the D Minister who after having considered the same rendered his decision. Accordingly, it is apparent that the Minister only came about to his decision after an examination of the relevant reports, negotiations between the parties, results of the DGIR's investigations, the law and other relevant matters.

[21] In all the circumstances and as there is no requirement under s. 9 of E the IRA 1967 obliging the Minister or the DGIR to disclose the investigation report we do not think that the non-production of the DGIR's report is fatal.

[22] Lastly, we observe that the Minister's decision is not impugned on the ground of procedural impropriety; rather the point raised by the appellant was that there was no evidence before the High Court. For the reasons F adumbrated above, we are of the view that the appellant's contention is clearly without merit as demonstrated by the comprehensive affidavits filed by the Minister and the DGIR. Accordingly, the appeal was dismissed with costs. Appeal dismissed with costs.

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